

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

MARVEL JONES,

Plaintiff,

vs.

KATHY HERIAN, ET AL., in their individual  
capacities only,

Defendants.

**8:20–CV–365**

**ORDER GRANTING LEAVE TO  
PROCEED *IN FORMA PAUPERIS* ON  
APPEAL**

This Court terminated the above-captioned case on March 30, 2023, after issuing an Order adverse to *pro se* Plaintiff Marvel Jones. See [Filing 116](#); [Filing 117](#). Jones subsequently filed a Notice of Appeal on April 24, 2023. [Filing 118](#). This matter is now before the Court for a determination as to whether Jones may proceed *in forma pauperis* on appeal. [Filing 119](#).<sup>1</sup> Federal Rule of Appellate Procedure 24(a) leaves it to the district court to determine if a litigant may appeal *in forma pauperis*. See [Fed. R. App. P. 24\(a\)\(1\)](#). If the party wishing to proceed *in forma pauperis* was already permitted to do so in the district-court action, that party requires no further authorization to appeal *in forma pauperis* unless the appeal is not taken in good faith, the party is not otherwise entitled to proceed *in forma pauperis*, or a statute provides otherwise. See [Fed. R. App. P. 24\(a\)\(3\)\(A\)–\(B\)](#). Jones was previously allowed to proceed *in forma pauperis* before this Court, [Filing 7](#), and the exceptions under Rule 24(a)(3) do not apply. Accordingly,

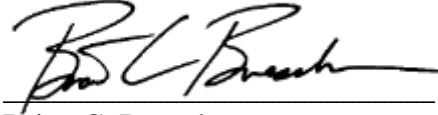
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<sup>1</sup>The Court notes that the memorandum from the Clerks' Office to the undersigned Judge describes Jones as a "prisoner" and references the Prison Litigation Reform Act. See [Filing 119](#). As Judge Kopf noted when he initially granted Jones permission to proceed *in forma pauperis* before this Court, Jones "is not a prisoner within the meaning of the PLRA." [Filing 7 at 5](#) n.1. Jones is a civilly committed sex offender at the Norfolk Regional Center. [Filing 116 at 1](#). See *Kolocotronis v. Morgan*, 247 F.3d 726, 728 (8th Cir. 2001); see also *Reed v. Clarke*, No. 4:04CV3168, 2005 WL 1075092, at \*1 (D. Neb. May 5, 2005) ("The Prison Litigation Reform Act ('PLRA') does not apply to persons in custody pursuant to the Mental Health Commitment Act, as the definition of 'prisoner' in the PLRA does not include a person involuntarily committed for reasons of mental health").

IT IS ORDERED: Jones is permitted to appeal *in forma pauperis*.

Dated this 24th day of April, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'B. C. Buescher', written over a horizontal line.

Brian C. Buescher  
United States District Judge